

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>KATHRYN BLAIR, Individually and</b>	)	
<b>Administrator of Michael K. Wright,</b>	)	
<b>Deceased, et al.,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>3:08-CV-0127-M</b>
	)	
<b>ALFONSO CARDENAS, et al.,</b>	)	
<b>Defendants.</b>	)	

**ADDITIONAL FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and the District Court's order filed on September 2, 2008, this case has been remanded to the United States Magistrate Judge for further consideration in light of Plaintiffs' objections filed on August 11, 2008. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

**FINDINGS AND CONCLUSIONS:**

On August 1, 2008, the undersigned recommended that Defendant Alfonso Cardenas, MD, be DISMISSED without prejudice for failure to serve. *See* Fed. R. Civ. P. 4(m). Plaintiffs filed their objections on August 11, 2008, claiming they did not receive the court's show cause order filed on June 23, 2008, and outlining their efforts in serving Cardenas.<sup>1</sup>

Shortly thereafter, on August 12, 2008, the undersigned filed findings and conclusions recommending that the District Court dismiss for failure to state a claim (on the basis of defendants' motion as well as *sua sponte*) on all claims and the defendants sued, predicated on

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<sup>1</sup> Contrary to Plaintiffs' assertion the June 3, 2008 order did not grant them an extension of time to complete service of process. The order only provided that Plaintiffs' motion for leave to amend be granted.

Plaintiffs' state-created danger theory of liability under the Due Process Clause. The undersigned further recommended that the District Court decline to exercise supplemental jurisdiction over Plaintiffs' state law, negligence claims against the Mesquite Community Hospital, Security Officer Ron Con, AEP-EMCARE Medical Group, and Nurse Kelly. Plaintiffs have not objected as of the filing of this recommendation.


Plaintiffs base their medical care claims against Dr. Cardenas on state law negligence. As set out in the August 12, 2008 recommendation, the District Court should decline to exercise supplemental jurisdiction and dismiss all claims against Dr. Cardenas without prejudice. *See* 28 U.S.C. § 1367(c). Plaintiffs will have 60 days from the date this recommendation is accepted to re-file their negligence claims against Dr. Cardenas in state court. *See* Tex. Civ. Prac. & Rem. Code Ann. § 16.064(a)(2).

RECOMMENDATION:

For the foregoing reasons, it is recommended that Plaintiffs' state law claims against Dr. Cardenas be DISMISSED without prejudice to being refiled in state court.

A copy of this recommendation will be transmitted to counsel for Plaintiffs and counsel for Defendants.

SIGNED this 4th day of September, 2008.

  
WM. F. SANDERSON, JR.  
UNITED STATES MAGISTRATE JUDGE

### NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.